



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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August 9, 1991

Re: Proper Treatment of Leased
Property Upon Change of Ownership

Dear Mr.

This is in response to your letter to me of May 30, 1991 in which you ask whether the opinion expressed in our letter of September 4, 1985 to the Madera County Counsel has changed in view of the following events which have occurred since that time.

Since 1985 an Assessment District was formed and a substantial amount of funds raised through a bond issue by that District. Those funds were used to purchase the master leases from the two private companies who previously held them. The County of Madera is now the holder of those master leases. The funds were also used to purchase lease extensions for all of the sublessees so that at this time each sublease well expire at the same time the master lease expires. The master lease will expire in the year 2013. As part of this transaction, each sub-lessee acquired a right of first refusal to purchase his or her property.

The question remains whether (and if so, how) a change of sublessee can be treated as a change in ownership of the improvements located on the leased property.

In our letter of September 4, 1985 we concluded that neither the sublessee nor PG&E (the lessor) was the owner of the improvements on the leased land. The improvements, therefore, necessarily must have been owned by the two lessees subject to estates for years held by the sublessees. Thus, when Madera County purchased the master leases from the two private

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companies that previously held them, Madera County became the owner of the improvements subject to estates for years held by the sublessees.

These improvements, therefore, would be exempt from taxation pursuant to Article XIII, section 3(b) of the California Constitution. The acquisition of the fee interest in these improvements by Madera County, however, results in the creation of taxable possessory interest in the improvements pursuant to Revenue and Taxation Code section 107 and Property Tax Rule 21 subdivisions (a) and (b). See also Board Letter to Assessors No. 83/103 dated January 6, 1983 (copy attached) for a discussion of the creation of taxable possessory interests where leased property is purchased for investment purposes by a public retirement system.

Revenue and Taxation Code section 61(b) provides that subject to exceptions not here present, the creation, renewal, sublease or assignment of a taxable possessory interest in tax exempt real property for any term is a change in ownership. See also Property Tax Rule 462(e).

Accordingly, a change of sublessee (presumably by assignment) would constitute a change in ownership of the sublessee's possessory interest in the improvements under section 61(b) and Property Tax Rule 462(e).

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel

EFE:ta

220.0551 **Possessory Interests.** The lease of tax-exempt land by a school district or other municipal non-assessable district to a public facilities corporation solely owned by the district creates a taxable possessory interest assessable to the corporation but which is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). The corporation's subsequent sublease of the land to the district would not cancel the possessory interest. The corporation would still have "constructive possession," with the district's possession of the land being pursuant to and subordinate to the corporation's right under the lease. Again, however, section 62(a)(2) would apply to exclude the sublease from change in ownership. C 4/20/93. (M99-1)